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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA  
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11 MICHAEL ANTHONY NELSON,

12 Petitioner,

13 v.

14 WARDEN HOWELL, et al.,

15 Respondents.  
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Case No. 2:18-cv-00565-APG-CWH

**ORDER**

17 Petitioner has submitted an application to proceed in forma pauperis (ECF No. 4). The  
18 court finds that petitioner is unable to pay the filing fee.

19 The court has reviewed the petition under Rule 4 of the Rules Governing Section 2254  
20 Cases in the United States District Courts. The court will dismiss ground 3. The court will serve  
21 the petition upon respondents for a response to the remaining two grounds.

22 In ground 3 petitioner alleges, in full:

23 Petitioner is Actuall [sic] Innocent, a constitutional violation has contributed to my  
24 conviction of Burglary. The evidence was insufficient.

25 Assuming that a freestanding claim of actual innocence in a non-capital case is viable, and to the  
26 extent that ground 3 is a freestanding claim of actual innocence, petitioner has not met the high  
27 threshold for establishing that claim. See Jones v. Taylor, 763 F.3d 1242 (9th Cir. 2014). To the  
28 extent that ground 3 is a claim of insufficient evidence to support the verdict of guilt for burglary,

1 it is redundant to ground 2, which is a fully pleaded claim that the evidence was insufficient to  
2 find petitioner guilty of burglary.

3 IT THEREFORE IS ORDERED that the application to proceed in forma pauperis (ECF  
4 No. 4) is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

5 IT FURTHER IS ORDERED that the clerk of the court shall file the petition for a writ of  
6 habeas corpus pursuant to 28 U.S.C. § 2254.

7 IT FURTHER IS ORDERED that ground 3 of the petition is **DISMISSED**.


8 IT FURTHER IS ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General  
9 for the State of Nevada, as counsel for respondents.

10 IT FURTHER IS ORDERED that the clerk shall electronically serve upon respondents a  
11 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the  
12 petition.

13 IT FURTHER IS ORDERED that respondents shall have forty-five (45) days from the  
14 date on which the petition was served to answer or otherwise respond to the petition.  
15 Respondents shall raise all potential affirmative defenses in the initial responsive pleading,  
16 including untimeliness, lack of exhaustion, and procedural default. Successive motions to dismiss  
17 will not be entertained. If respondents file and serve an answer, then they shall comply with Rule  
18 5 of the Rules Governing Section 2254 Cases in the United States District Courts, and then  
19 petitioner shall have forty-five (45) days from the date on which the answer is served to file a  
20 reply. If respondents file a motion, then petitioner will have fourteen (14) days to file a response  
21 to the motion, and respondents will have seven (7) days from the date of filing of the response to  
22 file a reply.

23 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper copies  
24 of any electronically filed exhibits need not be provided to chambers or to the staff attorney,  
25 unless later directed by the court.

26 DATED: July 9, 2018.

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ANDREW P. GORDON  
United States District Judge